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BEFORE THE ARIZONA CORPORATION

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AZ CORP COMMISSION
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J. ALAN SMITH,

COMPLAINANT,

VS.

PAYSON WATER CO., INC. /BROOKE
UTILITIES, INC.

RESPONDENT.

DOCKET NO. W-03514A-12-0007

Arizona Corporation Commission

DOCKETED

SEP 23 2013

DOCKETED BY

GAZ

PROCEDURAL ORDER

BY THE COMMISSION:

On January 10, 2012, J. Alan Smith ("Complainant") filed with the Arizona Corporation Commission ("Commission") a Formal Complaint against Payson Water Co., Inc. ("Payson Water" or "Company") and Brooke Utilities, Inc.

On February 2, 2012, Payson Water filed an Answer to the Complaint and Motion to Dismiss.

On February 16, 2012, the Complainant filed a Reply to Respondent's Answer.

On February 23, 2012, a Procedural Order was issued scheduling a procedural conference for March 9, 2012.

On March 9, 2012, the procedural conference was held as scheduled.

On March 29, 2012, the Company filed a Motion to Dismiss.

On March 30, 2012, Payson Water filed a Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint.

On April 3, 2012, the Complainant filed a Response and Objection to Respondent's Motion to Quash Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny.

1 On April 3, 2012, the Complainant filed a Response and Objection to Respondent's Motion to
2 Dismiss and Motion to Deny.

3 On April 9, 2012, Payson Water filed a Reply to Complainant's Response to Payson Water
4 Co.'s Motion to Dismiss and Motion to Deny.

5 On April 9, 2012, the Company also filed a Reply by Payson Water Co. to Complainant's
6 Response and Objection to Respondent's Motion to Quash Brooke Utilities, Inc. as a Party to the
7 Complaint.
8

9 On April 13, 2012, the Complainant filed a Response and Objection to Respondent's Motion
10 to Quash Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny.

11 On April 13, 2012, the Complainant also filed an Objection to Respondent's Reply to
12 Complainant's Response to Respondent's Motion to Dismiss and Motion to Stay.

13 On April 20, 2012, the Commission's Utilities Division ("Staff") filed a Notice of Filing
14 regarding the status of a subpoena issued to Martin's Trucking.
15

16 On May 3, 2012, Staff filed a Status of Mediation indicating that a settlement was not reached
17 by the parties and requesting that a hearing be scheduled.

18 On June 18, 2012, a Procedural Order was issued scheduling a hearing for August 7, 2012,
19 and setting deadlines for the filing of pre-filed testimony.

20 On July 16, 2012, the Complainant filed a Notice of Complainant's Initial Discovery and
21 Disclosure.
22

23 On July 17, 2012, the Complainant filed his direct testimony.

24 On July 23, 2012, the Complainant filed a Notice of Complainant's Second Discovery and
25 Disclosure.

26 On July 30, 2012, Payson Water filed rejoinder testimony.

27 On July 30, 2012, Staff filed a Memorandum stating its position regarding the complaint.
28

1 On August 1, 2012, the Complainant filed a Notice of Complainant's Third Discovery and
2 Disclosure.

3 On August 1, 2012, the Complainant filed a Notice of Service of Process Subpoenas on Jim
4 Pearson and Pearson Water Company.

5 On August 1, 2012, the Complainant filed a Motion to Compel Jim Pearson and Pearson
6 Water Co. to Comply with Subpoenas.

7 On August 1, 2012, the Complainant filed a Motion to Compel Respondents to Comply with
8 Complainant's 1st Set of Data Requests.

9 On August 1, 2012, Payson Water filed a Supplemental Motion to Quash Brooke Utilities Inc.
10 as a Party to the Complaint.

11 On August 2, 2012, Payson Water filed a Notice of Initial Disclosure.

12 On August 6, 2012, Payson Water filed a Supplemental Motion to Dismiss.

13 On August 7, 2012, the Complainant filed a Notice of Complainant's Fourth Discovery and
14 Disclosure.

15 On August 7, 2012, the hearing in this matter was convened, and at which time the
16 Complainant requested a continuance of the hearing for 90 days. The Complainant indicated that he
17 had consulted with an attorney who had agreed to represent him in this complaint case, but the
18 attorney needed an additional 60 to 90 days to review the case file. On that basis, the hearing was
19 continued for 90 days, on the condition that the Complainant's attorney discuss with the other parties
20 an alternative hearing schedule and submit such schedule well before the 90 days were exhausted.

21 On August 7, 2012, Dennis B. Tresca filed an Application for Intervention.

22 On August 13, 2012, Payson Water filed a Motion to Dismiss a Portion of the Complaint.

23 On August 13, 2012, Payson Water filed an Objection to Complainant's Fourth Discovery and
24 Disclosure.

1 On August 13, 2012, Payson Water filed an Objection to Application of Dennis B. Tresca for
2 Intervention.

3 On August 20, 2012, Payson Water filed a Notice of Timely Compliance with Subpoena.

4 On August 20, 2012, the Complainant filed a Response to Respondent's Objection to Tresca
5 Application for Intervention and Motion to Deny.

6 On August 20, 2012, the Complainant filed a Response to Respondent's Objection to
7 Complainant's Fourth Discovery and Disclosure and Motion to Deny.

8 On August 20, 2012, the Complainant filed a Response to Respondent's Motion to Dismiss a
9 Portion of the Complaint and Motion to Deny.

10 On August 23, 2012, Payson Water filed a Reply to Complainant's Response to Respondent's
11 Motion to Dismiss a Portion of the Complaint.

12 On September 4, 2012, the Complainant filed a Response to Respondent's Reply to
13 Complainant's Challenge to Motion to Dismiss a Portion of the Complaint.

14 On September 6, 2012, Payson Water filed a Motion to Quash Subpoena.

15 On September 12, 2012, the Complainant filed a Notice of Service of Process Subpoenas on
16 Robert T. Hardcastle, Brooke Utilities, Inc., and Payson Water Co.

17 On September 13, 2012, the Complainant filed a Response and Objection to Respondent's
18 Motion to Quash Subpoena.

19 On September 13, 2012, Mary E. Hansen filed an Application for Intervention.

20 On September 17, 2012, a Procedural Order was issued scheduling a procedural conference
21 for September 28, 2012, and directing counsel for the Complainant to file a Notice of Appearance
22 prior to the procedural conference.

23 On September 24, 2012, the Complainant filed a Motion to Initiate an Action in the Superior
24 Court to Compel Jim Pearson, Pearson Transport, Robert T. Hardcastle, Brooke Utilities, Inc., and
25

1 Payson Water Co. to Comply with the Subpoenas Served Upon Them.

2 On September 28, 2012, the procedural conference was held, as scheduled, during which
3 discussions occurred regarding, among other things, the appropriate process for enforcing a subpoena
4 previously served on Jim Pearson to appear at the August 7, 2012 hearing that was subsequently
5 vacated to allow the Complainant additional time to obtain counsel. The Complainant was
6 represented at the September 28, 2012 procedural conference by Michael J. Harper, of the firm
7 Walker & Harper, P.C.
8

9 On October 3, 2012, Mr. Harper filed a formal Notice of Appearance on behalf of the
10 Complainant.

11 On January 2, 2013, Payson Water filed a Motion to Dismiss on the basis that the
12 Complainant had failed to pursue the Complaint after retaining counsel.

13 On January 10, 2013, the Complainant filed a Response to Motion to Dismiss claiming that
14 any delays were due to the failure of Mr. Pearson to comply with a previously issued Subpoena.
15

16 On January 10, 2013, the Complainant also filed a Notice of Submission of Demand for
17 Compliance with Subpoenas and Request for Issuance of Procedural Order Directing Compliance
18 Proceedings in the Superior Court.

19 On February 27, 2013, a Procedural Order was issued scheduling a procedural conference for
20 March 14, 2013 to discuss issues related to Commission enforcement of subpoenas.

21 On March 14, 2013, the procedural conference was held as scheduled.

22 On March 18, 2013, the Complainant filed a Motion to Compel Responses to Data Requests
23 and Subpoena Duces Tecum.
24

25 On March 20, 2013, a Procedural Order was issued Compelling Compliance with Subpoena
26 Duces Tecum to Jim Pearson and/or Pearson Water.

27 On March 26, 2013, Payson Water filed a Reply to Complainant's Motion to Compel
28

1 Responses to Data Requests and Subpoena Duces Tecum. The Company claims that it has provided
2 all relevant documents in either this docket or the associated Gehring complaint docket (12-0008),
3 and there is ample information available for the Complainant to address the issues raised.

4 On April 12, 2013, Staff filed a Status Update indicating that Staff counsel had contacted Mr.
5 Pearson and Mr. Pearson indicated "he had supplied all the documents in the related Docket No. 12-
6 0008." According to Staff, Mr. Pearson also stated that he had misplaced some of the documents and
7 was trying to locate them, and Mr. Pearson provided Staff with a document he claims to have faxed
8 to Mr. Smith.
9

10 On June 10, 2013, the Complainant filed a Renewed Motion to Compel Documents and
11 Information Requested by Subpoena and Data Requests/Motion for Order Requiring Jim Pearson to
12 Fully Respond to Subpoena Duces Tecum/Request for Hearing on Motions.

13 On June 26, 2013, a Procedural Order was issued scheduling a procedural conference for July
14 10, 2013, and ordering Mr. Pearson to provide copies of documents requested by Complainant's
15 counsel.
16

17 On July 10, 2013, the procedural conference was held, as scheduled. At the procedural
18 conference, counsel for the new owner of the Company entered an appearance and various procedural
19 issues were discussed. At the conclusion of conference, the parties were directed to attempt the
20 pending discovery disputes and counsel for Payson Water was given two additional weeks to file a
21 response to the Complainant's Motion to Compel.
22

23 Also on July 10, 2013, Mr. Hardcastle filed a Motion to Dismiss Brooke Utilities, Inc., as a
24 Party to This Docket.

25 On July 12, 2013, counsel for Payson Water filed a formal Notice of Appearance on behalf of
26 the Company.

27 On July 23, 2013, Payson Water filed a Status Report – Discovery, stating that the Company's
28

1 counsel had been unable to discuss the discovery disputes with the Complainant's counsel due to
2 vacation.

3 On July 24, 2013, the Complainant's counsel filed a Request for Extension Re: Response to
4 Brooke Utilities, Inc., Motion to Dismiss.

5 On July 25, 2013, the Complainant filed a Notice of Errata stating that the extension request
6 should have asked for 10 additional days rather than 60.

7 On August 5, 2013, the Complainant filed a Response to Motion to Dismiss Brooke Utilities,
8 Inc. as a Party to This Docket.

9 On August 21, 2013, Payson Water filed a Response to Complainant's Motion to Compel.

10 On September 9, 2013, the Complainant filed a Reply in Support of Motion to Compel
11 Documents and Information Requested by Subpoena and Data Requests and Request for Sanctions.

12 IT IS THEREFORE ORDERED that a **procedural conference shall be scheduled for**
13 **October 7, 2013, at 10:00 a.m.,** at the offices of the Commission, **Hearing Room No. 1,** 1200 West
14 Washington, Phoenix, Arizona 85007, to discuss pending motions and procedural matters.

15 IT IS FURTHER ORDERED that Payson Water shall be prepared to provide copies of all
16 documents requested by the Complainant responsive to prior data requests, including
17 documents that may be in the possession of the Company's prior owner, Brooke Utilities, Inc.
18 Payson Water shall also make all reasonable efforts to acquire the documents requested by the
19 Complainant that are alleged to be in the possession and control of Mr. Pearson.

20 IT IS FURTHER ORDERED that all parties shall undertake settlement discussions
21 regarding the pending discovery disputes and possible settlement of the overall Complaint, and
22 shall be prepared to discuss at the procedural conference what efforts were made regarding
23 attempts at settlement (without disclosing details of any offers of settlement made during those
24 discussions). Staff shall make every reasonable effort to facilitate settlement of the disputed
25 discussions). Staff shall make every reasonable effort to facilitate settlement of the disputed
26 discussions). Staff shall make every reasonable effort to facilitate settlement of the disputed
27 discussions). Staff shall make every reasonable effort to facilitate settlement of the disputed
28 discussions).

1 issues between the parties.

2 IT IS FURTHER ORDERED that all parties shall discuss with each other, prior to the
3 procedural conference, potential hearing dates and shall be prepared to offer proposed hearing
4 dates in the event agreement is not reached.

5 IT IS FURTHER ORDERED that Staff counsel shall be prepared to discuss, with
6 specificity, what actions it intends to take to enforce the prior subpoenas issued to Mr. Pearson
7 related to hauling logs and associated documents.
8

9 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
10 Communications) applies to this proceeding and shall remain in effect until the Commission's
11 Decision in this matter is final and non-appealable.

12 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
13 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
14 hearing.
15

16 DATED this 23rd day of September, 2013.

17
18 

19 DWIGHT D. NODES
20 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

21 Copies of the foregoing mailed/delivered
22 This 23rd day of September, 2013 to:

23 Jim Pearson
24 Pearson Transport/Pearson Water
25 P.O. Box 193
26 1120 Rodeo Rd.
Williams, AZ 86046
(SERVICE BY CERTIFIED AND
REGULAR U.S. MAIL)

27 J. Alan Smith
28 8166 Barranca Road
Payson, AZ 85541

Michael J. Harper
WALKER & HARPER, P.C.
111 W. Cedar Ln., Suite C
Payson, AZ 85541

Robert T. Hardcastle
BROOKE UTILITIES, INC.
P.O. Box 82218
Bakersfield, CA 93380

1 Patrick J. Black
2 FENNEMORE CRAIG, P.C.
3 2394 East Camelback Rd., Suite 600
4 Phoenix, AZ 85016
5 Attorneys for Payson Water Company

6 Janice Alward, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, AZ 85007

11 Steve Olea, Director
12 Utilities Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007

16 ARIZONA REPORTING SERVICE, INC.
17 2200 N. Central Ave., Suite 502
18 Phoenix, AZ 85004-1481

19 By: Rebecca Unquera
20 Rebecca Unquera
21 Assistant to Dwight D. Nodes
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